

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VICKY CHAO,	§
	§ No. 475, 2004
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 88001884DI
Plaintiff Below-	§
Appellee.	§

Submitted: January 30, 2006

Decided: April 13, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

ORDER

This 13th day of April 2006, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The defendant, Vicky Chao, filed this appeal from the Superior Court's denial of her second motion for postconviction relief. The Superior Court summarily rejected Chao's claim that this Court's decision in *Williams v. State*¹ should be applied retroactively to invalidate her convictions of three counts of felony murder. After careful consideration, we conclude that the Superior Court abused its discretion in this case when it summarily denied Chao's motion, finding that the claim was procedurally

¹ *Williams v. State*, 818 A.2d 906 (Del. 2003).

barred and that reconsideration was not warranted in the interest of justice. Accordingly, we reverse the Superior Court's judgment and remand for further proceedings consistent with this opinion.

(2) The record reflects that Chao was convicted in August 1989 by a Superior Court jury of three counts of intentional murder, three counts of felony murder, and related offenses stemming from an arson fire at the home of William Chen, which killed three people. In her direct appeal ("*Chao I*"), Chao argued, among other things, that the evidence was insufficient to convict her of felony murder because no rational juror could conclude that the murders had been committed "in furtherance of the commission" of the arson.² We rejected Chao's interpretation of the phrase "in furtherance" as used throughout the first and second degree murder statutes, stating:

On the contrary, for felony murder liability to attach, a killing need only accompany the commission of an underlying felony. Thus, if the "in furtherance" language has any limiting effect, it is solely to require that the killing be done by the felon, him or herself.³

We thus affirmed Chao's convictions in *Chao I*.

(3) In 1995, the Superior Court granted Chao's motion for postconviction relief and ordered a new trial on the ground that William

² *Chao v. State*, 604 A.2d 1351, 1362-63 (Del. 1992) (quoting 11 Del. C. §§ 635, 636).

³ *Id.* at 1363.

Chen had given perjured testimony at Chao's original trial. At her retrial, Chao was convicted of three counts of felony murder, arson, and second degree conspiracy. The jury acquitted Chao of the intentional murder charges. Ultimately, this Court affirmed Chao's convictions on appeal ("*Chao II*").⁴

(4) In 2003, this Court issued its opinion in *Williams v. State*.⁵ In *Williams*, the defendant was accused of breaking into the home where his girlfriend was staying and shooting her to death. A jury convicted him of first degree intentional murder, first degree felony murder, and first degree burglary. On appeal, the Court, sitting *en banc*, expressly overruled that portion of its opinion in *Chao I*, which interpreted the "in furtherance" language of the felony murder statute. We reversed Williams' conviction of felony murder on the ground that "the statutory language of the Delaware felony murder statute not only requires that the murder occur during the course of the felony but also that the murder occur to facilitate the commission of the felony."⁶ Because the sole objective of Williams'

⁴ *Chao v. State*, 780 A.2d 1060 (Del. 2001).

⁵ 818 A.2d 906 (Del. 2003).

⁶ *Id.* at 913.

burglary was to commit murder, “the death that occurred was not ‘in furtherance of’ the burglary-it was the intent of the burglary.”⁷

(5) After the Court issued its opinion in *Williams*, Chao, acting *pro se*, filed her motion for postconviction relief arguing that the Superior Court should reconsider her felony murder convictions in light of the holding of *Williams*. The Superior Court summarily rejected Chao’s motion on the ground that the issue previously had been litigated and thus was procedurally barred. The Superior Court did not explicitly address Chao’s argument that reconsideration of her claim was warranted based on the Court’s ruling in *Williams*. Nonetheless, the Superior Court summarily concluded that reconsideration was not necessary in the interest of justice.

(6) As the State points out in its answering brief, to invoke the interest of justice provision of Superior Court Criminal Rule 61(i)(4), “a movant must show that subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him.”⁸ In the present case, the Superior Court offered no rationale why the holding of *Williams*, which expressly overruled the Court’s contrary interpretation of the felony murder statute set forth in *Chao I*, could not be applied retroactively in

⁷ *Id.* at 908.

⁸ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

Chao's own case. In the absence of a rationale, we can only conclude that the Superior Court abused its discretion in summarily rejecting Chao's motion.

(7) Consequently, we conclude that this matter must be remanded to the Superior Court for further proceedings. On remand, the Superior Court is directed to appoint counsel for Chao and to permit both counsel for Chao and counsel for the State the opportunity to brief the following issues:

a. Is the Superior Court required to reconsider Chao's felony murder convictions in light of *Williams*?

b. Is the State estopped from arguing against the retroactive application of *Williams* in light of its contrary position in *State v. Kirk*?⁹

The Superior Court shall hold a hearing and issue its findings and recommendations within 90 days of this Order.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED. This matter is remanded for further proceedings consistent with this order. Jurisdiction is retained.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁹ *State v. Kirk*, 2004 WL 396407 (Del. Super. Feb. 26, 2004), *aff'd*, 2005 WL 3526325 (Del. Dec. 23, 2005).